AO 91 (Rev. 02/09) Criminal Complaint

United States District Court

for the

Western District of New York

UNITED STATES DISTRICT COURT
JUN 29 2015
MICHAEL J. ROEMER, CLERK
WESTERN DISTRICT OF NY

United States of America

v.

Case No. 15-MJ- 4115

MICHAEL SMITH, VIRGILIO DIAZ, and ELADIO DELEON,

Defendants

CRIMINAL COMPLAINT

I, BRADLEY J. JACOBS, the complainant in this case, state that the following is true to the best of my knowledge and belief that in the Western District of New York, the defendants violated offenses described as follows:

Between on or about May 14, 2015 and May 20, 2015, **MICHAEL SMITH, VIRGILIO DIAZ** and **ELADIO DELEON** did conspire together to commit an offense against the United States, to wit, they conspired to pass, utter, or attempt to pass or utter, or keep in their possession, or conceal, counterfeit currency, which they knew to be counterfeit, with the intent to defraud in violation of Title 18, United States Code, Section 371; and

Between on or about May 14, 2015 and May 20, 2015, **VIRGILIO DIAZ** and **ELADIO DELEON** did knowingly pass, utter, or attempt to pass or utter, or keep in their possession, or conceal, counterfeit currency, to wit, counterfeit $100 federal reserve notes, which they knew to be counterfeit, with the intent to defraud, in violation of Title 18, United States Code Sections 472 and 2.

SEE ATTACHED AFFIDAVIT OF SPECIAL AGENT PETER UZAROWSKI.

This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.

BS Jacobs
Complainant's signature

S.A. BRADLEY S. JACOBS, S.A., USSS
Printed name and title

Sworn to before me and signed in my presence.

Date: June 29 2015

Marian W Payson
Judge's signature

HONORABLE MARIAN W. PAYSON
UNITED STATES MAGISTRATE JUDGE
Printed name and title

City and State: Rochester, New York

15-mj-4115

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

BRADLEY S. JACOBS, being duly sworn, deposes and says:

INTRODUCTION

1. I am a Special Agent of the United States Secret Service (USSS), and have been so employed since August 1999. I am assigned to the Rochester Resident Agency, where my duties include the investigation of crimes involving financial institutions, including bank fraud, as well as crimes involving the manufacturing, possession, and uttering of counterfeit currency of the United States.

2. I make this affidavit in support of a criminal complaint charging MICHAEL SMITH (SMITH), VIRGILIO DIAZ (DIAZ) and ELADIO DELEON (DELEON) with violating Title 18, United States Code, Section 371 (conspiracy), and VIRGILIO DIAZ and ELADIO DELEON with violating Title 18, United States Code, Sections 472 and 2 (possession of counterfeited currency) and respectively (collectively, the "counterfeiting offenses").

3. The statements contained in this Affidavit are based upon matters observed by me personally, information provided to me by other law enforcement officers, information provided to me by witnesses with personal knowledge of events, my review of physical evidence and records, and my investigation and experience and training as a Special Agent with the United States Secret Service. Because this affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me concerning this investigation. Rather, I have set forth only the facts that I believe are necessary to establish probable cause to believe that MICHAEL SMITH, VIRGILIO DIAZ and ELADIO DELEON did violate Title 18, United States Code, Sections 472 and 371.

The Horseheads, New York Investigation

4. On 5/20/15, the New York State Police (NYSP) contacted the USSS Rochester RA and requested assistance with a counterfeit currency investigation.

5. On 5/20/15, the NYSP were notified by Lowe's loss prevention of a subject who had just purchased a package of light bulbs using a counterfeit $100 bill. Lowe's loss prevention also advised the same subject had used a counterfeit $100 bill at the same location on 5/14/15. Lowe's loss prevention described the subject as a black male wearing a black shirt with a black hat. Lowe's loss prevention witnessed the subject enter a blue BMW X5, bearing New York registration GXT-3611, in the front passenger side. Lowe's loss prevention observed the vehicle traveling east on I-86 and contacted the NYSP. NYSP

subsequently initiated a traffic stop of on that vehicle on I-86 eastbound in the town of Horseheads. NYSP discovered three (3) occupants in the vehicle after the traffic stop. The owner/operator of the vehicle was identified as SMITH, the front seat passenger was identified as DIAZ and the rear seat passenger was identified as DELEON. DIAZ was wearing a black hat and a black shirt. Investigators have also reviewed Lowe's security video which depicted DIAZ conducting the purchases.

6. DIAZ was questioned by the NYSP in which he stated he did purchase light bulbs using a $100 bill. DIAZ stated he gets paid $100 a day doing construction work and he was paid (3) $100 bills last week for 3 days of work. DIAZ was unable to provide the names of the foreman or business he did construction work or the location.

7. DELEON was questioned by the NYSP in which he stated he did make purchases at Aldi's, Rite Aid and Jubilee using counterfeit $100 bills earlier that day. DELEON also stated the counterfeit $100 bills costs $40 genuine to purchase. NYSP subsequently obtained (1) counterfeit $100 bill from each store; Aldi's, Rite Aid and Jubilee. Video surveillance depicts DELEON purchasing food items at Aldi's and Jubilee.

8. SMITH was questioned by the NYSP in which he denied knowledge of the counterfeit money. SMITH stated he worked 5 days on the same construction crew with DIAZ last week and received (5) $100 bills as payment.

9. NYSP conducted a vehicle impound inventory and subsequent consent search of the BMW X5 and observed several large folds of money in various locations in the vehicle including the front passenger door panel and a back pack in the rear of the vehicle. NYSP ultimately inventoried $2358.00 in genuine United States currency from the vehicle. Also observed in the vehicle were what appeared to be recently purchased food consisting of pizza, chicken wings and ribs.

10. SMITH, DIAZ and DELEON were arrested by the NYSP for criminal possession of a forged instrument and arraigned in the Town of Big Flats Court.

The Watkins Glen, New York Investigation

11. On 5/28/15, the Watkins Glen Police Department (WGPD) contacted the USSS Rochester RA and requested assistance with a counterfeit currency investigation.

12. WGPD explained that numerous businesses in their jurisdiction received counterfeit $100 bills as payment on 5/20/15. According to WGPD, the serial numbers on the counterfeit bills, suspect and vehicle descriptions matched that of NYSP Horseheads investigation. The WGPD investigation revealed the following purchases using counterfeit $100 bills within approximately two hours:

A) Wal-Mart store surveillance video recorded who appear to be DIAZ and DELEON making separate purchases with counterfeit $100 bills consisting of the same serial numbers. A third male who appears to be SMITH, is also seen at the Wal-Mart but does not make a purchase. All three subjects are seen entering the blue BMW X5 SUV and leaving the parking lot.

B) Burger King store surveillance video recorded who appears to be DIAZ making a purchase with a counterfeit $100 bill.

C) CVS store surveillance video recorded who appears to be DIAZ making a purchase with a counterfeit $100 bill.

D) Advance Auto Parts sales clerk identified DELEON in a photo montage as the subject who made a purchase with a counterfeit $100 bill.

E) Pizza Hut manager had received text message photos from the Horseheads Lowe's loss prevention employee who was involved in the counterfeit investigation in Horseheads. The Pizza Hut manager identified who appears to be DIAZ, from Lowe's surveillance video, as the subject who made a purchase with a counterfeit $100 bill. The Pizza Hut manager describes DIAZ as wearing black pants, a black shirt and a black baseball cap. This was the same description given of DIAZ shortly after from Horseheads' Lowe's loss prevention.

13. Your affiant has examined the notes in question and determined the $100 notes, were in fact counterfeit United States currency. In making this determination, your

affiant relied on specific training and experience in dealing with counterfeit United States currency, as well as the absence of several security features that appear in genuine currency issued by the United States Treasury. It is also common in counterfeit schemes, as in this investigation, to use the counterfeit $100 bills to make small purchases and receive genuine bills as change from the $100 bills. Hence the $2358.00 in genuine United States currency located in the vehicle.

14. The counterfeit $100 notes possessed by SMITH, DIAZ AND DELEON have been linked together through certain common identifying markings and through the United States Secret Service Counterfeit Tracking Database.

CONCLUSION

WHEREFORE, based on the forgoing, I respectfully submit that there is probable cause to believe that:

MICHAEL SMITH, VIRGILIO DIAZ and ELADIO DELEON did conspire together to commit an offense against the United States, in that they conspired to pass, utter, or attempt to pass or utter, or keep in their possession, or conceal, counterfeit currency, which they knew to be counterfeit, with the intent to defraud in violation of Title 18, United States Code, Section 371; and VIRGILIO DIAZ and ELADIO DELEON did knowingly pass, utter, or attempt to pass or utter, or keep in their possession, or conceal, counterfeit currency, to wit, counterfeit $100 federal reserve notes, which they knew to be counterfeit, with the intent to defraud, in violation of Title 18, United States Code Sections 472 and 2.

Bradley S. Jacobs, Special Agent
United States Secret Service

Sworn to before me this
29 day of June 2015.

HON. MARIAN W. PAYSON
United States Magistrate Judge